

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

| | | |
|--------------------------|---|-----------|
| ANGELA NAILS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MC420-009 |
| |) | |
| DOING BUSINESS AS NAILS, |) | |
| |) | |
| |) | |
| Defendants. |) | |

REPORT AND RECOMMENDATION

Pro se plaintiff Angela Nails has filed this action requesting that the Court issue an Order “to any business using the name NAILS within the name of their business to STOP AND DESIST using the name NAILS.” Doc. 1 at 1. She seeks the Order because the businesses’ use of “nails” creates “confusion” with plaintiff’s literary projects. *See id.* Although the Court is skeptical, to say the least, of the legal merit of her request, her application to proceed *in forma pauperis* shows that she is not indigent. *See* doc. 2. Her motion for leave to proceed IFP should, therefore, be **DENIED**.

In her application, plaintiff attests to monthly take-home wages in the amount of \$1,213.29. *See* doc. 2 at 1. She lists \$571.13 in monthly

expenses. Leaving her with an apparent monthly discretionary income of \$642.16. She also states that she has a car, \$3,500 worth of jewelry, \$200 in a checking or savings account, and a house. *Id.* at 2.

While a plaintiff need not be absolutely destitute in order to proceed IFP, *Adkins v. E.I. Dupont de Nemours*, 335 U.S. 331, 339 (1948), the fact that financing her own litigation may cause some difficulty is not sufficient to relieve a plaintiff of her obligation to pay her own way where it is possible to do so without undue hardship. *Thomas v. Secretary of Dep't of Veterans Affairs*, 358 F. App'x 115, 116 (11th Cir. 2009) (the Court has wide discretion in ruling on an IFP application, and should grant the privilege “sparingly” in civil cases for damages). Two important points must be underscored. First, proceeding IFP is a privilege, not an entitlement. *See Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 198 (1993). Second, courts have discretion to afford litigants IFP status; it's not automatic. 28 U.S.C. § 1915(a)(1) (courts “*may* authorize the commencement” of IFP actions); *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *see also Marceaux v. Democratic Party*, 79 F. App'x 185, 186 (6th Cir. 2003) (no abuse of discretion when court determined plaintiff could afford to pay the filing fee without undue

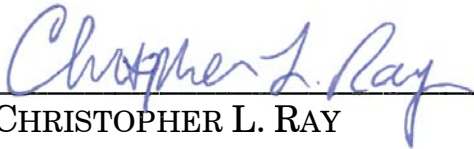
hardship because he has no room and board expenses, owns a car, and spends the \$250.00 earned each month selling plasma on completely discretionary items); *Lee v. McDonald's Corp.*, 231 F.3d 456, 458 (8th Cir. 2000) (the decision of whether to grant or deny IFP status under 28 U.S.C. § 1915 is discretionary). Given her disclosed income, expenses, and assets, plaintiff is not indigent. Accordingly, her application to proceed *in forma pauperis* should be **DENIED**. Doc. 2.

This R&R is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72.3. Within 14 days of service, any party may file written objections to the R&R with the Court and serve a copy on all parties. The document should be captioned "Objections to Magistrate Judge's Report and Recommendations." Any request for additional time to file objections should be filed with the Clerk for consideration by the assigned district judge.

After the objections period has ended, the Clerk shall submit this R&R together with any objections to the assigned district judge. The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are

advised that failure to timely file objections will result in the waiver of rights on appeal. 11th Cir. R. 3-1; *see Symonette v. V.A. Leasing Corp.*, 648 F. App'x 787, 790 (11th Cir. 2016); *Mitchell v. United States*, 612 F. App'x 542, 545 (11th Cir. 2015).

SO REPORTED AND RECOMMENDED, this 5th day of
November, 2020.



CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA